



U.S. Citizenship
and Immigration
Services

(b)(6)



DATE: **JUN 18 2015**

FILE #: [REDACTED]

APPLICATION RECEIPT #: [REDACTED]

IN RE: Applicant: [REDACTED]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under Section 212(i) of the Immigration and Nationality Act, 8 U.S.C. § 1182(i)

ON BEHALF OF APPLICANT:
[REDACTED]

Enclosed is the non-precedent decision of the Administrative Appeals Office (AAO) for your case.

If you believe we incorrectly decided your case, you may file a motion requesting us to reconsider our decision and/or reopen the proceeding. The requirements for motions are located at 8 C.F.R. § 103.5. Motions must be filed on a Notice of Appeal or Motion (Form I-290B) **within 33 days of the date of this decision**. The Form I-290B web page (www.uscis.gov/i-290b) contains the latest information on fee, filing location, and other requirements. **Please do not mail any motions directly to the AAO.**

Thank you,


Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Field Office Director, New Delhi, India, denied the waiver application. The applicant, through counsel, appealed the Field Office Director's decision, and the Administrative Appeals Office (AAO) dismissed the appeal. The applicant submitted two motions, and the previous decisions were affirmed. The matter is now before the AAO on a third motion. The motion to reconsider will be denied, but the motion to reopen will be granted. The AAO's prior decisions will be affirmed, and the application will remain denied.

The applicant is a native and citizen of Pakistan who was found to be inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for having sought to procure an immigrant visa through willful misrepresentation. The Field Office Director concluded the applicant failed to establish extreme hardship would be imposed upon a qualifying relative and denied her Form I-601, Application for Waiver of Grounds of Inadmissibility, accordingly. We dismissed the applicant's appeal and subsequently determined on motion that although the applicant established her U.S. citizen father would experience extreme hardship if he relocated to Pakistan, she did not show his hardship would be extreme if he were to remain in the United States.

On motion to reopen and reconsider currently before us, the applicant asserts that she was erroneously found inadmissible, and in the alternative, her U.S. citizen father would experience extreme hardship because of her inadmissibility. *See Brief Submitted in Support of the Motion to Reopen and Reconsider*, dated December 1, 2014.

A motion to reopen must state the new facts to be proved and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or Service policy. A motion to reconsider a decision on an application or petition must, when filed, also establish that the decision was incorrect based on the evidence of record at the time of the initial decision. 8 C.F.R. § 103.5(a)(3).

As discussed below, the applicant's current submission does not meet the requirements for a motion to reconsider. The applicant does not cite binding precedent decisions or other legal authority establishing that in our prior decision, we incorrectly applied the pertinent law or agency policy, nor does she show that our prior decision was erroneous based on the evidence of record at the time. Consequently, the motion to reconsider must be denied. 8 C.F.R. § 103.5(a)(4). However, with the current motion, the applicant submits new documentary evidence. Accordingly, the applicant's motion to reopen will be granted.

In addition to the evidence described in our previous decisions, the record also includes, but is not limited to, a brief in support of the current motion and a psychological evaluation. The entire record was reviewed and considered in rendering a decision on the applicant's motion.

Section 212(a)(6) of the Act provides, in relevant part:

(C) Misrepresentation.-

(i) In general.- Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

(iii) Waiver authorized.- For provision authorizing waiver of clause (i), see subsection (i).

We concluded the evidence the applicant submitted with her appeal and previous motions was insufficient to find that she did not willfully misrepresent a material fact in attempting to procure admission to the United States and therefore, the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act. The applicant continues to contest this finding in the instant motion.

As outlined by the Board of Immigration Appeals (BIA), a material misrepresentation requires that the alien willfully make a material misstatement to a government official for the purpose of obtaining an immigration benefit to which one is not entitled. *Matter of Kai Hing Hui*, 15 I&N Dec. 288, 289-90 (BIA 1975). The term “willfully” means knowing and intentionally, as distinguished from accidentally, inadvertently, or in an honest belief that the facts are otherwise. *See Matter of Healy and Goodchild*, 17 I&N Dec. 22, 28 (BIA 1979).

In our previous decisions, we addressed the evidence showing the applicant’s willfulness in misrepresenting her parents’ divorce in connection with her immigrant-visa application as the stepdaughter of a U.S. citizen. We noted the applicant was advised in June 2006 of the consequences of making misrepresentations during her testimony and submitting corroborating documents at the consular interview to attain an immigrant visa as the stepdaughter of a U.S. citizen. We also noted the record establishes the applicant misrepresented her parents’ divorce and presented fraudulent documentation to procure a visa, and her testimony and the presentation of the documentation were both voluntary and deliberate. We further noted her actions indicated she was sufficiently mature to understand the potential immigration-related consequences if it were revealed that her parents were not in fact divorced and that she did not have the required relationship with her purported stepmother, the petitioner.

In the matter before us, the applicant asserts she had a good-faith belief that her parents were divorced on [REDACTED] 1999, and the submission of any allegedly fraudulent documents, including a divorce decree, was an innocent mistake. The applicant also asserts our prior decision concerning her willfulness “blatantly ignores the evidence previously submitted” and our reasoning “is severely flawed,” as we failed to properly analyze the intent requirement under section 212(a)(6)(C)(i) of the Act, because it would be impossible for her to make a willful misrepresentation “if she did not know that the divorce decree was invalid.” To support her assertions, the applicant refers to her affidavit and a letter from the [REDACTED] Pakistan, indicating that the divorce decree she submitted during the consular interview was valid.

As we noted in our previous decisions, the validity of the divorce decree submitted by the applicant during her consular interview is unclear. Although the applicant submitted the letter from the [REDACTED] to establish that her parents were divorced on [REDACTED], 1999, a local investigation conducted shortly after the applicant's consular interview revealed that her parents are not divorced but, in fact, married. The new evidence the applicant submits with her current motion, limited to a psychological evaluation, does not address the authenticity of her parents' divorce. Based on the record before us, we reaffirm our previous finding that the applicant's misrepresentation of her parents' divorce in connection with an immigrant-visa application as the stepdaughter of a U.S. citizen was willful as opposed to accidental, inadvertent, or in an honest belief that the facts were otherwise. The Act makes clear that a foreign national must establish admissibility "clearly and beyond doubt." See section 235(b)(2)(A) of the Act. Accordingly, the applicant remains inadmissible under section 212(a)(6)(C)(i) of the Act, and she requires a waiver under section 212(i) of the Act.

Section 212(i) of the Act provides, in relevant part:

- (1) The Attorney General [now Secretary of the Department of Homeland Security (Secretary)] may, in the discretion of the [Secretary], waive the application of clause (i) of subsection (a)(6)(C) in the case of an alien who is the spouse, son or daughter of a United States citizen or of an alien lawfully admitted for permanent residence, if it is established to the satisfaction of the [Secretary] that the refusal of admission to the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such an alien.

Section 212(i) of the Act provides that a waiver of the bar to admission is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member. Hardship to the applicant or her siblings can be considered only insofar as it results in hardship to a qualifying relative. The applicant's U.S. citizen father is the only qualifying relative in this case. Once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion. See *Matter of Mendez-Morales*, 21 I&N Dec. 296 (BIA 1996).

Extreme hardship is "not a definable term of fixed and inflexible content or meaning," but "necessarily depends upon the facts and circumstances peculiar to each case." *Matter of Hwang*, 10 I&N Dec. 448, 451 (BIA 1964). In *Matter of Cervantes-Gonzalez*, the BIA provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship to a qualifying relative. 22 I&N Dec. 560, 565 (BIA 1999). The factors include the presence of a lawful permanent resident or United States citizen spouse or parent in this country; the qualifying relative's family ties outside the United States; the conditions in the country or countries to which the qualifying relative would relocate and the extent of the qualifying relative's ties in such countries; the financial impact of departure from this country; and significant conditions of health, particularly when tied to an unavailability of suitable medical care in the country to which the qualifying relative would relocate. *Id.* The BIA added that not all of the foregoing factors need be analyzed in any given case and emphasized that the list of factors was not exclusive. *Id.* at 566.

The BIA has also held that the common or typical results of removal and inadmissibility do not constitute extreme hardship, and has listed certain individual hardship factors considered common rather than extreme. These factors include: economic disadvantage, loss of current employment, inability to maintain one's present standard of living, inability to pursue a chosen profession, separation from family members, severing community ties, cultural readjustment after living in the United States for many years, cultural adjustment of qualifying relatives who have never lived outside the United States, inferior economic and educational opportunities in the foreign country, or inferior medical facilities in the foreign country. *See generally Id.* at 568; *In re Pilch*, 21 I&N Dec. 627, 632-33 (BIA 1996); *Matter of Ige*, 20 I&N Dec. 880, 883 (BIA 1994); *Matter of Ngai*, 19 I&N Dec. 245, 246-47 (Comm'r 1984); *Matter of Kim*, 15 I&N Dec. 88, 89-90 (BIA 1974); *Matter of Shaughnessy*, 12 I&N Dec. 810, 813 (BIA 1968).

However, though hardships may not be extreme when considered abstractly or individually, the BIA has made it clear that “[r]elevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists.” *Matter of O-J-O-*, 21 I&N Dec. 381, 383 (BIA 1996) (quoting *Matter of Ige*, 20 I&N Dec. at 882). The adjudicator “must consider the entire range of factors concerning hardship in their totality and determine whether the combination of hardships takes the case beyond those hardships ordinarily associated with deportation.” *Id.*

The actual hardship associated with an abstract hardship factor such as family separation, economic disadvantage, cultural readjustment, et cetera, differs in nature and severity depending on the unique circumstances of each case, as does the cumulative hardship a qualifying relative experiences as a result of aggregated individual hardships. *See, e.g., In re Bing Chih Kao and Mei Tsui Lin*, 23 I&N Dec. 45, 51 (BIA 2001) (distinguishing *In Re Pilch* regarding hardship faced by qualifying relatives on the basis of variations in the length of residence in the United States and the ability to speak the language of the country to which they would relocate). For example, though family separation has been found to be a common result of inadmissibility or removal, separation from family living in the United States can also be the most important single hardship factor in considering hardship in the aggregate. *See Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (quoting *Contreras-Buenfil v. INS*, 712 F.2d 401, 403 (9th Cir. 1983)); *but see Matter of Ngai*, 19 I&N Dec. at 247 (separation of spouse and children from applicant not extreme hardship due to conflicting evidence in the record and because applicant and spouse had been voluntarily separated from one another for 28 years). Therefore, we consider the totality of the circumstances in determining whether denial of admission would result in extreme hardship to a qualifying relative.

In our previous decisions, we addressed the applicant's assertions concerning her father's hardship factors related to his physical and emotional health, and we concluded that the evidence demonstrated the applicant's father's diagnoses of various medical conditions, including uncontrolled diabetes, diabetic neuropathies, hyperglycemia, and hypertension. However, we noted the record lacked evidence of the applicant's father's current mental health or its effect on his medical conditions. To corroborate statements concerning her father's emotional and psychological hardship, the applicant supplements the record with a psychological evaluation dated November 25, 2014. The applicant asserts the evaluation establishes extreme hardship to her father caused by their separation. According to the evaluation, her father “has had a severe decline in his mental and physical health

that requires others to support him” economically and socially, and his “symptoms have been further exacerbated, since he received disparaging news” about the applicant’s waiver.

In her November 2014 evaluation, a clinical psychologist diagnoses the applicant’s father with major depressive disorder, single episode, recurrent–moderate; and she states that his current medications include prescriptions for medical and psychiatric conditions, as he is being treated for anxiety and insomnia. The psychologist also states the applicant’s father is “socially isolated, less able to work, and not able to care for himself, because he does not have family in New York.” The psychologist adds that the applicant’s father’s “severe decline . . . requires others to support him” financially and socially, “since he is increasingly disabled and work is hampered.” The psychologist also asserts that the applicant’s father reports “hopelessness and suicidal ideation” but is “guarded” in answering questions; he has not seen a neurologist about “his failing cognitive status”; and the recent “major decline in his cognitive and emotional functioning . . . is consistent with decline due to major medical problems and probable dementia.” The psychologist also diagnoses the applicant’s father with unspecified neurocognitive disorder, and she indicates the applicant’s father has not discussed related problems with his physician. The psychologist recommends the applicant’s father pursue psychotherapy, a neurological consultation, and an evaluation of his current medications.

We recognize that the absence of a family member causes emotional hardship and that in this case, the applicant’s father is experiencing serious emotional hardship. However, the applicant provides no medical evidence related to the psychologist’s recent conclusions that her father’s physical condition has recently declined. Similarly, the record is unclear concerning the psychologist’s conclusion about the economic support the applicant’s father receives from others because of his mental health. The record does not reflect that the applicant previously raised her father’s economic situation as a hardship factor. In a brief submitted with the applicant’s waiver application, the applicant states that although her father “does not have a high paying job or an enormous salary, he is living comfortably and able to support his family,” earning about \$26,000 annually. The record also includes a letter dated April 25, 2006, from the general manager for [REDACTED] indicating the applicant’s father has been employed in the capacity of an owner and operator since March 22, 2001; and a tax return for 2005, indicating the applicant’s father’s household income of \$19,538. However, the record lacks evidence corroborating the psychologist’s most recent conclusions about the effect his mental and physical health have had on his employment; it also lacks evidence of his financial obligations and his inability to meet such obligations without the applicant. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). Accordingly, we are unable to conclude that the new evidence submitted on motion, the November 2014 psychological evaluation, sufficiently explains the effect the applicant’s father’s conditions have on him and his ability to continue working; it also does not establish his reliance on others for economic and social support.

Although the applicant’s father is experiencing a degree of hardship in the applicant’s absence, for reasons expressed above and in our previous decisions, the evidence, considered in the aggregate, does not establish the applicant’s spouse would suffer extreme hardship as a result of separation from the applicant.

In our prior decisions, we determined the evidence established that the applicant's U.S. citizen father would suffer extreme hardship upon relocation to Pakistan to be with the applicant given his medical diagnoses; conditions in Pakistan, which would affect him medically; the Department of State's travel warning about Pakistan;¹ and the normal hardships associated with relocation. The record continues to reflect the cumulative effect of the hardship the applicant's father would experience upon relocation due to the applicant's inadmissibility rises to the level of extreme.

We can find extreme hardship warranting a waiver of inadmissibility only where an applicant has demonstrated extreme hardship to a qualifying relative in the scenario of separation *and* the scenario of relocation. A claim that a qualifying relative will relocate and thereby suffer extreme hardship can easily be made for purposes of the waiver even where there is no actual intention to relocate. *Cf. Matter of Ige*, 20 I&N Dec. 880, 886 (BIA 1994). Furthermore, to relocate and suffer extreme hardship, where remaining in the United States and being separated from the applicant would not result in extreme hardship, is a matter of choice and not the result of inadmissibility. *Id.*, *also cf. In re Pilch*, 21 I&N Dec. at 632-33. As the applicant has not demonstrated extreme hardship from separation, we cannot find that refusal of admission would result in extreme hardship to the qualifying relative in this case.

In this case, the record does not contain sufficient evidence to show that the hardship faced by the applicant's qualifying relative, considered in the aggregate, rises beyond the common results of removal or inadmissibility to the level of extreme hardship. We therefore find the applicant has not established extreme hardship to her U.S. citizen father as required under section 212(i) of the Act.

In application proceedings, it is the applicant's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

ORDER: The motion to reconsider is denied, and the motion to reopen is granted. The October 30, 2014 decision of the Administrative Appeals Office is affirmed.

¹ Since our prior decision dated October 30, 2014, the U.S. Department of State has issued an updated travel warning, effective February 24, 2015.